

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4874

IN THE MATTER OF:

Served June 20, 1996

Application of MARYLOU'S JANITORIAL)  
SERVICE, INC., Trading as MARYLOU'S)  
TRANSPORTATION SERVICE, for a )  
Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-96-23

By application accepted for filing May 1, 1996, Marylou's Janitorial Service, Inc., a Maryland corporation trading as Marylou's Transportation Service, seeks a certificate of authority to transport passengers, together with mail, express and baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

Notice of this application was served on May 6, 1996, in Order No. 4827, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication and a statement regarding applicant's plans to acquire insurance and four more vehicles. Applicant filed a statement on May 16, 1996, and an affidavit of publication on June 6, 1996.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, applicant's corporate status, facilities, proposed tariff, finances, and regulatory compliance record.

Applicant's proposed tariff contains per capita rates, including rates for transportation under the DC Medicaid program. The proposed tariff also includes group charter and transfer rates for transportation in 4-, 6-, 8-, 12-, and 15-passenger vehicles. The application discloses, however, that applicant's assets are limited to \$5,000 cash and a 4-passenger jeep.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

(i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and

(ii) that the transportation is consistent with the public interest.

An applicant bears the burden of establishing fitness and consistency with the public interest.<sup>1</sup> The fitness inquiry focuses on an applicant's financial fitness, operational fitness, and regulatory compliance fitness.<sup>2</sup> Applicant has failed to establish any of these.

To make a prima facie case of financial fitness, an applicant must show the present ability to sustain operations during the first year under WMATC authority.<sup>3</sup> An applicant must proffer evidence that it "has secured the financing needed to implement and sustain the proposed service."<sup>4</sup>

The transportation proposed by applicant requires five vehicles; applicant has one. Applicant was directed to explain in writing how it planned to finance the acquisition of four more vehicles and corresponding insurance with such meager initial capital. Applicant's response asserts that said vehicles and insurance will be financed out of operating revenue. The response is deficient in two respects. First, it is unsigned and unsworn. Commission Rule No. 4 requires that all pleadings, documents or other papers filed by a party shall be signed, subscribed to and verified under oath. An unsigned, unsworn statement is entitled to no weight.<sup>5</sup> Second, applicant's projected operating statement contains no estimate of gas and oil expense for the existing vehicle and no estimate of post-acquisition costs associated with four more. Hence, the facts of record do not support the assertion.

As for operational fitness, the application does not demonstrate how applicant will be able to furnish service for non-ambulatory persons under the DC Medicaid program with a 4-passenger jeep or how applicant will be able to furnish transportation in 6-, 8-, 12-, and 15-passenger vehicles.

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<sup>1</sup> In re Washington, D.C. Jitney Ass'n, Inc., No. AP-95-26, Order No. 4795 (Mar. 15, 1996).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> In re Washington, D.C. Jitney Ass'n, Inc., No. AP-95-26, Order No. 4665 (Sept. 12, 1995) (emphasis in original).

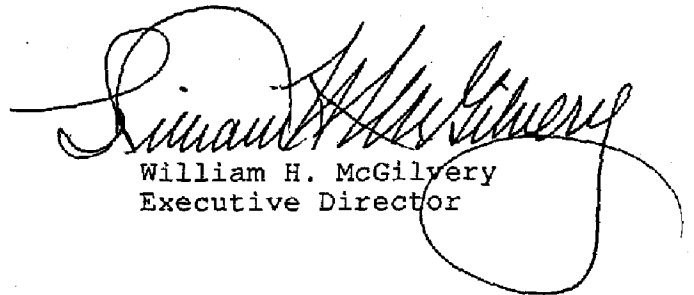
<sup>5</sup> See In re Rapidtrans, Inc., No. AP-90-28, Order No. 3558 (Sept. 17, 1990) (unnotarized protest carries no weight).

Applicant's failure to file an acceptable financial fitness statement tends to show a lack of compliance fitness.<sup>6</sup>

Based on the evidence in this record, the Commission is unable to find applicant fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements.

THEREFORE, IT IS ORDERED that the application of Marylou's Janitorial Service, Inc., trading as Marylou's Transportation Service, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER AND LIGON:



William H. McGilvery  
Executive Director

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<sup>6</sup> See In re Highview Bus Serv., Inc. & Courtesy Bus Rental Sys., Inc., No. AP-78-47, Order No. 1988 (Apr. 25, 1979) (transferee's noncooperation in filing required documents shows lack of compliance fitness); In re Omnibus Corp., No. 380, Order No. 1762 (Oct. 26, 1977) (applicant which failed to fully comply with financial information requirement lacked compliance fitness).